

Patrice L. Bishop (182256)
service@ssbla.com
STULL, STULL & BRODY
10940 Wilshire Boulevard
Suite 2300
Los Angeles, CA 90024
Tel: (310) 209-2468
Fax: (310) 209-2087

Howard T. Longman
TSVI@aol.com
STULL, STULL & BRODY
6 East 45th Street
New York, NY 10017
Tel: (212) 687-7230
Fax: (212) 490-2022

Gary S. Graifman
ggraifman@kgglaw.com
KANTROWITZ, GOLDHAMER & GRAIFMAN
747 Chestnut Ridge Road
Chestnut Ridge, New York 10977
Tel: (845) 356-2570
Fax: (845) 356-4335

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARTIN VOGEL and KENNETH
MAHONEY, on Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

v.

APPLE, INC., STEVEN P. JOBS, FRED
ANDERSON, NANCY HEINEN, WILLIAM V.
CAMPBELL, MILLARD S. DREXLER,
ARTHUR D. LEVINSON, and JEROME P.
YORK,

Defendants.

CASE NO.: C08-03123-JF

CLASS ACTION

**STIPULATION AND [PROPOSED]
ORDER STAYING ACTION**

Judge: Hon. Jeremy Fogel
Department: Ctrm. 3, 5th Floor

1 Plaintiffs Martin Vogel and Kenneth Mahoney (“Plaintiffs”) and Defendants Apple
2 Inc. (“Apple”), Fred D. Anderson, Nancy R. Heinen, Steven P. Jobs, William V. Campbell,
3 Millard S. Drexler, Arthur D. Levinson, and Jerome B. York (collectively, the
4 “Defendants”) hereby stipulate as follows:

5 WHEREAS, on August 24, 2006, Plaintiffs filed a class action complaint before this
6 Court alleging that certain defendants violated the Securities Exchange Act of 1934 (the
7 “Exchange Act”), including § 10(b) and Rule 10b-5 thereunder, and § 20(a). That action was
8 entitled *Martin Vogel and Kenneth Mahoney v. Steven Jobs, et al.*, Case No. 5:06-cv-05208-JF
9 (N.D. Cal.) (the “Apple Backdating Action No. 1”), and concerning alleged practice of issuing
10 backdating stock options;

11 WHEREAS, on October 24, 2006, New York City Employees' Retirement System
12 (“NYCERS”) moved for their appointment as Lead Plaintiff of the Apple Backdating Action No.
13 1 pursuant to 15 U.S.C. § 78u-4;

14 WHEREAS, on January 19, 2007, this Court appointed NYCERS as Lead Plaintiff of that
15 litigation;

16 WHEREAS, on March 23, 2007, NYCERS filed, as Lead Plaintiff, its Consolidated
17 Complaint and asserted claims under §§ 14(a) and 20(a) of the Exchange Act and the common
18 law duty of disclosure. The Consolidated Complaint did not assert any claims for Defendants’
19 alleged violations of §10(b) of the Exchange Act;

20 WHEREAS, on November 14, 2007, this Court granted Defendants’ motion to dismiss
21 the Consolidated Complaint on the ground, *inter alia*, that NYCERS failed to plead standing to
22 bring a direct claim (“Dismissal Order”);

23 WHEREAS, this Court granted NYCERS leave to amend its complaint but held that
24 NYCERS could only amend for the purpose of attempting to plead a derivative claim, not a
25 direct class action claim;

26 WHEREAS, on December 14, 2007, NYCERS filed a motion for leave to file a First
27 Amended Consolidated Class Action Complaint that contained direct class action claims for
28 alleged violations of § 10(b) of the Exchange Act;

1 WHEREAS, on May 14, 2008, this Court denied NYCERS's motion for leave to file an
2 amended complaint ("Denial Order");

3 WHEREAS, on June 12, 2008, this Court entered Judgment for defendants ("Judgment");

4 WHEREAS, on June 17, 2008, NYCERS filed its Notice of Appeal of the Dismissal
5 Order, the Denial Order and subsequent Judgment ("NYCERS's Appeal");

6 WHEREAS, Plaintiffs filed this action ("Apple Backdating Action No. 2") on June 27,
7 2008, alleging that Defendants violated § 10(b) of the Exchange Act and Rule 10b-5 thereunder
8 and § 20(a) of the Exchange Act by, *inter alia*, issuing backdated stock options to themselves
9 and other Apple employees;

10 WHEREAS, Plaintiffs and Defendants agree that if this litigation were to go forward
11 prior to resolution of NYCERS's appeal(s) of the Apple Backdating Action No. 1, there is a risk
12 of duplicative litigation regarding Defendants' alleged backdating and alleged violations of the
13 Exchange Act, and that this risk could result in a waste of judicial resources.

14 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

15 1. This action shall be stayed pending the resolution of NYCERS's Appeal (the
16 "Resolution");

17 2. "Resolution" means the date upon which NYCERS's Appeal is finally resolved
18 meaning either the Judgment has become final and is no longer subject to appeal, or the
19 case has been remanded to this Court and the remand order has become final and is no
20 longer subject to appeal;

21 3. As part of this stay, all of Plaintiffs' remaining obligations under the Private
22 Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4, will also be stayed
23 pending the Resolution of NYCERS's Appeal;

24 4. All applicable time periods and deadlines from date of the entry of this Order to the
25 time when the stay is lifted will toll.

26 5. By agreeing to this stipulation, Defendants expressly reserve and do not waive any
27 defenses, arguments and motions as to all claims alleged in Apple Backdating Action No. 2.

28 IT IS SO STIPULATED.

1 Dated: July 17, 2008

Patrice L. Bishop
STULL, STULL & BRODY

3
4 By: /s/ Patrice L. Bishop

Patrice L. Bishop
10940 Wilshire Boulevard
Suite 2300
Los Angeles, CA 90024
Tel: (310) 209-2468
Fax: (310) 209-2087

Howard T. Longman
STULL, STULL & BRODY
6 East 45th Street
New York, NY 10017
Tel: (212) 687-7230
Fax: (212) 490-2022

Gary S. Graifman
KANTROWITZ, GOLDHAMER & GRAIFMAN
747 Chestnut Ridge Road
Chestnut Ridge, New York 10977
Tel: (845) 356-2570
Fax: (845) 356-4335

Attorneys for Plaintiffs

16 I, Patrice L. Bishop, am the ECF User whose ID and password are being used to file this
17 Stipulation and [Proposed] Order Staying Action. In compliance with General Order 45, X.B., I
18 hereby attest that the signatory below has concurred in this filing.

1 Dated: July 17, 2008

George A. Riley
Luann L. Simmons
Robert D. Tronnes
O'MELVENY & MYERS LLP

4 By: /s/ Robert D. Tronnes
Robert D. Tronnes
Embarcadero Center West
275 Battery Street
San Francisco, CA 94111
Tel: (415) 984-8700
Fax: (415) 984-8701

8 Attorneys for Defendant Apple Inc.

9 Dated: July 17, 2008

Douglas R. Young
C. Brandon Wisoff
Grace K. Won
Stephanie Skaff
Sebastian A. Jerez
FARELLA, BRAUN + MARTEL LLP

13 By: /s/ Douglas R. Young
Douglas R. Young
235 Montgomery Street
17th Floor
San Francisco, CA 94104
Tel: (415) 954-4400
Fax: (415) 954-4480

17 Attorneys for Defendants Steven Jobs, William V.
Campbell, Millard S. Drexler, Arthur D. Levinson,
and Jerome P. York

20 Dated: July 17, 2008

Jerome C. Roth
Yohance C. Edwards
Genevieve A. Cox
MUNGER, TOLLES & OLSON LLP

24 By: /s/ Yohance C. Edwards
Yohance C. Edwards
560 Mission Street
27th Floor
San Francisco, CA 94105
Tel: (415) 512-4000
Fax: (415) 512-4077

28 Attorneys for Defendant Fred D. Anderson

1 Dated: July 17, 2008

Sarah A. Good
Jin H. Kim
Jason M. Habermeyer
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN

2
3
4
5 By: /s/ Jin H. Kim
6 Jin H. Kim
7 Three Embarcadero Center
8 Seventh Floor
9 San Francisco, CA 94111
10 Tel: (415) 434-1600
11 Fax: (415) 217-5910

12 Attorneys for Defendant Nancy R. Heinen
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER

Pursuant to the stipulation of the parties, and for good cause shown, IT IS
HEREBY ORDERED THAT:

1. This action shall be stayed pending the resolution of NYCERS's Appeal
("NYCERS's Appeal") of the Dismissal Order, the Denial Order and subsequent Judgment
evidenced by the Notice of Appeal filed on June 17, 2008;

2. "Resolution" means the date upon which NYCERS's Appeal is finally resolved
meaning either the Judgment has become final and is no longer subject to appeal, or the
case has been remanded to this Court and the remand order has become final and is no
longer subject to appeal;

3. As part of this stay, all of Plaintiffs' remaining obligations under the Private
Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4, will also be stayed
pending the Resolution of NYCERS's Appeal;

4. All applicable time periods and deadlines from date of the entry of this Order to
the time when the stay is lifted will toll.

Dated: _____

Honorable Jeremy Fogel
United States District Court Judge

